

§ 401.122 Supplementary details.

Forms, procedures and supplementary information, to effectuate these regulations, may be provided or required by the Executive Director as to any hearing, project or class of projects.

§ 401.123 Waiver of rules.

The Commission may, for good cause shown, waive rules or require additional information in any case.

§ 401.124 Construction.

This part is promulgated pursuant to section 14.2 of the Compact and shall be construed and applied subject to all of the terms and conditions of the Compact and of the provisions of section 15.1 of Pub. L. 87-328, 75 Stat. 688.

PART 410—BASIN REGULATIONS; WATER CODE AND ADMINISTRATIVE MANUAL—PART III WATER QUALITY REGULATIONS

AUTHORITY: Delaware River Basin Compact, 75 Stat. 688.

§ 410.1 Basin regulations—Water Code and Administrative Manual—Part III Water Quality Regulations.

(a) The Water Code of the Delaware River Basin is a codification of regulations of the Delaware River Basin Commission applicable to public and private water projects and programs within the Delaware River Basin. Article I of the water code sets forth general policies of the Commission. Article II concerns the conservation, development and utilization of Delaware River Basin water resources, including during periods of drought. Article III sets forth water quality standards and guidelines for the Delaware River Basin. Article IV contains rules relating to application of water quality standards within the Basin. The Commission's Administrative Manual—Part III, Water Quality Regulations, applies to all public and private entities that discharge waste to waters of the Delaware River Basin.

(b) Article III of the water code consists of Article III of the water quality regulations. Article IV of the water

code consists of portions of Article IV of the water quality regulations.

(c) Work, services, activities and facilities affecting the conservation, utilization, control, development or management of water resources within the Delaware River Basin are subject to the regulations contained within the Delaware River Basin Water Code with Amendments Through July 16, 2008, Printed: September 12, 2008, and the Administrative Manual part III Water Quality Regulations with Amendments Through July 16, 2008, Printed: September 12, 2008. Both the Delaware River Basin Water Code and the Administrative Manual part III Water Quality Regulations are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain or inspect a copy at the Delaware River Basin Commission (DRBC), 25 State Police Drive, West Trenton, New Jersey 08628-0360, 609-883-9500, <http://www.drbc.net>, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

[73 FR 55750, Sept. 26, 2008]

PART 415—BASIN REGULATIONS— FLOOD PLAIN REGULATIONS

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ENFORCEMENT

- 415.50 General conditions.
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AUTHORITY: Pub. L. 87-328 (75 Stat. 688).

SOURCE: 42 FR 13541, Mar. 11, 1977, unless otherwise noted.

GENERALLY

§ 415.1 Short title.

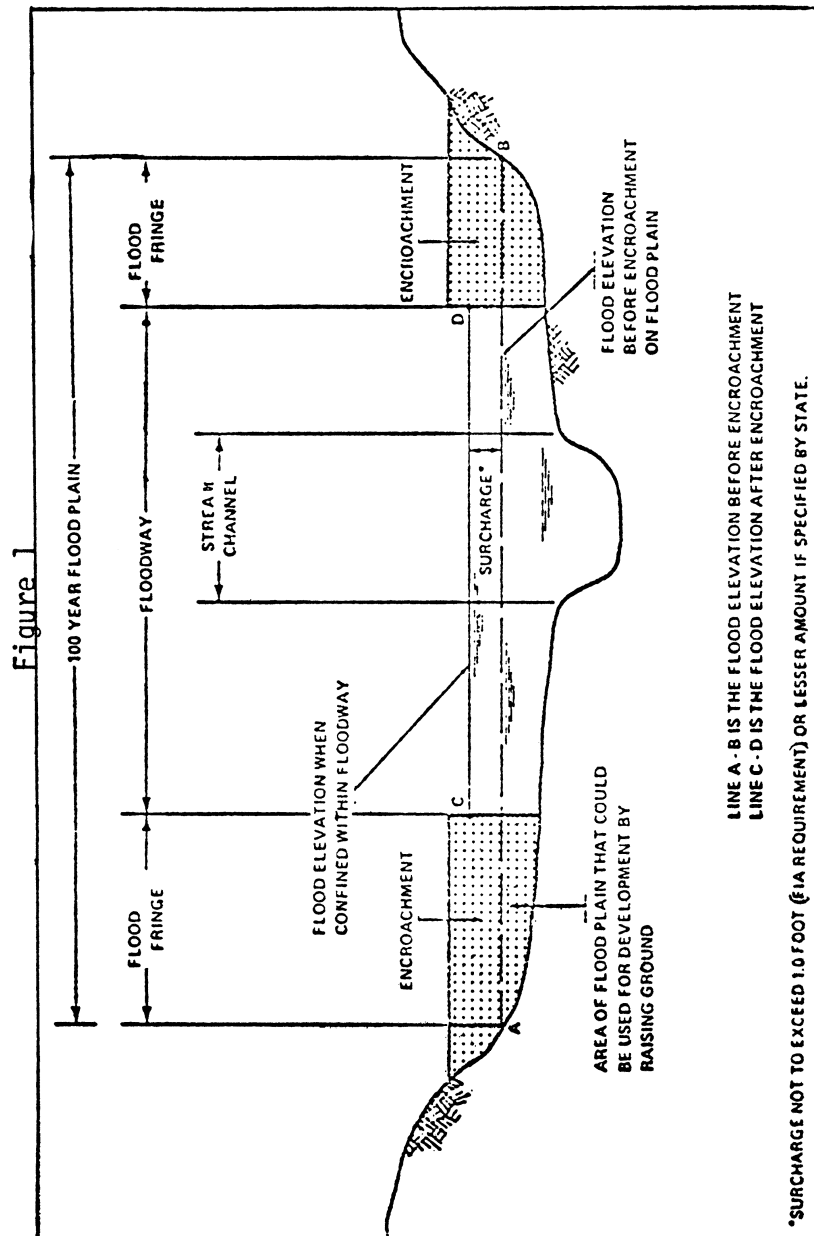
This part shall be known and may be cited as the “Flood Plain Regulations.”

§ 415.2 Definitions.

For the purposes of this part, except as otherwise required by the context:

Project means the same word as defined by section 1.2(g) of the Delaware River Basin Compact.

Floodway means the channel of the watercourse and those portions of the adjoining flood plains which are reasonably required to carry and discharge the regulatory flood. For this purpose the limit of the floodway shall be established by allowing not more than a one-foot rise of the water surface elevation of the regulatory flood as a result of encroachment. Wherever practical, equal conveyance reduction from each side of the flood plain shall be used. (See Figure 1.)



Flood fringe means that portion of the flood hazard area outside the floodway.

Flood hazard area means the area inundated by the regulatory flood.

Flood plain means the area adjoining the channel of a stream which has been or hereafter may be covered by flood water.

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Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, and contents of buildings.

Flood protection elevation means one foot above the elevation of the flood that has a one percent chance of occurring in any one year. (The 100-year flood).

Major tributary means the mainstem of the following streams:

PENNSYLVANIA

Brandywine Creek, Brodhead Creek, Big Bushkill Creek, Lackawaxen, Lehigh, Schuylkill, Neshaminy.

DELAWARE

Brandywine Creek, Christina.

NEW YORK

East Branch, Mongaup, Neversink, West Branch.

NEW JERSEY

Assunpink, Musconetcong, Paulins Kill, Rancocas, Pequest.

Official flood plain map means a map showing the flood plain area of a community prepared pursuant to the National Flood Insurance Act, or a map recognized by the Executive Director as meeting equivalent hydraulic or engineering criteria.

Regulatory flood means the flood which has a one percent chance of occurring in any one year. (The 100-year flood.)

Structure means any assembly of material above or below the surface of land or water, including but not limited to, buildings, dams, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, roads, railroads and bridges.

§415.3 Purpose and findings.

(a) The Commission hereby finds and determines that the use of flood plains is affected with a public interest due to:

(1) The danger to life and property due to increased flood heights or velocities caused by encroachments.

(2) The danger that materials may be swept onto other lands or downstream to the injury of others.

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(3) The requirements of a facility for a waterfront location.

(b) In order to protect the public interest, the following principles and goals have been determined:

(1) The overall goal is prudent land use within the physical and environmental constraints of the site.

(2) The principle of equal and uniform treatment shall apply to all flood plain users who are similarly situated.

(3) Flood plain use shall not result in nuisance to other properties.

(4) Flood plain use shall not threaten public safety, health and general welfare.

(5) Future land uses in private flood plains shall not result in public expense to protect the property and associated public services from flood damage.

(6) All future public and private flood plain users shall bear the full direct and indirect costs attributable to their use and actions.

(7) Restrictions on flood plain use, and flood hazard information shall be widely publicized.

(8) Land and water use regulations of responsible units of government shall not impair or conflict with the flood plain use standards duly adopted for the basin, except as provided for in §415.42(a) of this part.

(9) Plans for land and water use adopted by responsible agencies shall not impair or conflict with these flood plain use standards.

(10) No action of any unit of government shall impair or conflict with these flood plain use standards.

TYPES OF PROJECTS AND JURISDICTION

§415.20 Class I projects.

Projects described in paragraphs (a) and (b) of this section shall be subject to review by the Commission under standards provided by this section and in accordance with the provisions of §§415.30 through 415.33 of this part, as follows:

(a) All projects subject to review by the Commission under section 3.8 of the Compact and the regulations thereunder.

(b) State and local standards of flood plain regulation.

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§ 415.21 Class II projects.

Class II projects, subject to review in accordance with §§ 415.40 through 415.43 of this part, include all projects other than Class I projects, in non-tidal areas of the basin, which involve either:

(a) A development of land, either residential or non-residential within a flood hazard area which:

(1) Includes one or more structures covering a total land area in excess of 50,000 square feet; or

(2) Contains in excess of 25 residential building lots or 25 dwelling units as part of an integrated development plan whether or not such development is included in a single application; or

(b) A development of land in the flood hazard area to mine, manufacture, process, store or dispose of materials which, if flooded, would pollute the waters of the basin or threaten damage to off-site areas, including, without limitation thereto, materials which are poisonous, radioactive, biologically undesirable or floatable.

STANDARDS

§ 415.30 Regulations generally.

The uses of land within a flood hazard area shall be subject to regulation within one of the following categories:

- (a) Prohibited uses;
- (b) Permitted uses generally;
- (c) Uses by special permit.

§ 415.31 Prohibited uses.

(a) Within the floodway, except as permitted by special permit, the following uses are prohibited:

(1) Erection of any structure for occupancy at any time by humans or animals.

(2) Placing, or depositing, or dumping any spoil, fill or solid waste.

(3) Stockpiling or disposal of pesticides, domestic or industrial waste, radioactive materials, petroleum products or hazardous material which, if flooded, would pollute the waters of the basin.

(4) The storage of equipment or of buoyant materials, except for purposes of public safety.

(b) Within the flood fringe, except as permitted by special permit, the following uses are prohibited:

(1) Stockpiling or disposal of pesticides, domestic or industrial waste, radioactive materials, petroleum products or hazardous material which, if flooded, would pollute the waters of the basin.

(2) Any use which will adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility.

§ 415.32 Permitted uses generally.

(a) Within the floodway, the following uses are permitted to the extent that they do not require structures, fill or storage of materials or permanently installed equipment, and do not adversely affect the capacity of the floodway:

(1) Agricultural uses such as general farming, livestock, and dairy farming, horticulture, truck farming, sod farming, forestry, wild crop harvesting, and normal operating practices associated therewith.

(2) Industrial-commercial uses such as loading areas, parking areas and airport landing strips.

(3) Private and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.

(4) Uses such as lawns, gardens, parking areas and play areas.

(b) Within the flood fringe, the following uses are permitted:

(1) Any use permitted in the floodway.

(2) Residences and other structures constructed so that the first floor, including basement, is above the Flood Protection Elevation. When fill is used the finished fill elevation shall be no lower than the Flood Protection Elevation for the particular area and shall extend at least 15 feet beyond the limits of any structure or building erected thereon.

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§ 415.33 Uses by special permit.

(a) Within the floodway the following uses by special permit may be authorized under the standards hereinafter provided:

(1) Uses or structures accessory to open space use.

(2) Circuses, carnivals and similar transient enterprises.

(3) Drive-in theaters, signs and billboards.

(4) Extraction of sand, gravel and other non-toxic materials.

(5) Marinas, boat liveries, docks, piers, wharves and water control structures.

(6) Fish hatcheries.

(7) Railroads, streets, bridges, utility transmission lines and pipelines.

(b) Within the flood fringe the following uses by special permit may be authorized under standards hereinafter provided:

(1) *Non-residential uses generally.* Structures other than residence shall ordinarily be elevated as herein provided but may in special circumstances be otherwise flood proofed to a point above the Flood Protection Elevation.

(2) *Commercial uses.* Commercial structures shall be elevated so that no first floor or basement floor is below the Flood Protection Elevation; or such structures may be flood proofed to the Flood Protection Elevation. Accessory land uses, such as yards, railroad tracks and parking lots may be at lower elevations. However, a permit for such facilities to be used by the general public shall not be granted in the absence of a flood warning system, if the area is inundated to a depth greater than two feet or subject to flood velocities greater than four feet per second upon the occurrence of the Regulatory Flood.

(3) *Manufacturing and industrial uses.* Manufacturing and industrial buildings, structures, and appurtenant works shall be elevated so that no first floor or basement floor is below the Flood Protection Elevation; or such structures may be flood proofed to the Flood Protection Elevation. Measures shall be taken to minimize flood water interference with normal plant operations especially for streams having protracted flood durations. Certain accessory land uses as yards and parking

lots may have lesser protection subject to the flood warning requirements set out in 2 above.

(4) *Utilities, railroad tracks, streets and bridges.* Public utility facilities, roads, railroad tracks and bridges shall be designed to minimize increases in flood elevations and shall be compatible with local comprehensive flood plain development plans to the extent applicable. Protection to the Flood Protection Elevation shall be provided where failure or interruption of these public facilities would result in danger to the public health or safety, or where such facilities are essential to the orderly functioning of the area. Where failure or interruption of service would not endanger life or health, a lesser degree of protection may be provided for minor or auxiliary roads, railroads or utilities.

(5) *Water supply and waste treatment.* No new construction, addition or modification of a water supply or waste treatment facility shall be permitted unless the lowest operating floor of such facility is above the Flood Protection Elevation, or the facility is flood proofed according to plans approved by the Commission, nor unless emergency plans and procedures for action to be taken in the event of flooding are prepared. Plans shall be filed with the Delaware River Basin Commission and the concerned state or states. The emergency plans and procedures shall provide for measures to prevent introduction of any pollutant or toxic material into the flood water or the introduction of flood waters into potable supplies.

ADMINISTRATION

§ 415.40 Administrative agency.

(a) Class I projects as defined by § 415.20 of this part shall be subject to review and approval by the Commission.

(b) Class II projects as defined by § 415.21 shall be subject to review and approval by a duly empowered state or local agency; and if there be no such state or local agency at any time on and after January 1, 1978, and only during such time, the Commission may review any such project which has been

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identified by the Executive Director as having special flood hazards, and:

(1) Is located along the mainstem Delaware River or a major tributary thereof, or

(2) An agency of a signatory party requests such review.

§ 415.41 Special permits.

A special permit may be granted, or granted on stated conditions, provided:

(a) There is a clear balance in favor of the public interest in terms of the following environmental criteria:

(1) The importance of a facility to the community.

(2) The availability of alternative locations not subject to flooding for the proposed use.

(3) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(4) The relationship of the proposed use to any applicable comprehensive plan or flood plain management program for the area.

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(6) The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.

(7) The degree to which the proposed activity would alter natural water flow or water temperature.

(8) The degree to which archaeological or historic sites and structures, endangered or rare species of animals or plants, high quality wildlife habitats, scarce vegetation types, and other irreplaceable land types would be degraded or destroyed.

(9) The degree to which the natural, scenic and aesthetic values at the proposed activity site could be retained.

(b) The project shall not:

(1) Endanger human life.

(2) Have high flood damage potential.

(3) Obstruct flood flows nor increase flood heights or velocities unduly whether acting alone or in combination with other uses.

(4) Degrade significantly the water carrying capacity of any delineated floodway or channel.

(5) Increase significantly the rate of local runoff, erosion, or sedimentation.

(6) Degrade significantly the quality of surface water or the quality or quantity of ground water.

(7) Be susceptible to flotation.

(8) Have service facilities installed below the elevation of the regulatory flood without being adequately flood proofed.

§ 415.42 Technical standards.

(a) Standards used by state and local governments shall conform in principle to Commission standards but may vary in detail provided that resulting flood plain use will not be less restrictive than would result from the application of Commission standards. The Commission will review proposed state and local flood plain regulations to determine their compliance with Commission standards.

(b) Because of the variety and diversity of presently recognized hydrologic procedures, no one procedure or method is prescribed for determining the peak flow in cubic feet per second for the 100-year storm (Q 100) on which profiles for the delineation of flood hazard areas are based. The following may be used:

(1) A uniform Technique for Determining Flood Flow Frequencies—Bulletin No. 15—Water Resources Council, December 1967.

(2) Basin-Wide Program for Flood Plain Delineation—Delaware River Basin Commission—Anderson-Nichols & Co., Inc., June 1973.

(3) Magnitude and Frequency of Floods in New Jersey with Effects of Urbanization—Special Report 38 U.S.G.S.—New Jersey Department of Environmental Protection, 1974.

(4) Guidelines for Determining Flood Flow Frequency—Bulletin No. 17—Water Resources Council, March 1976.

State and local agencies may use methods resulting in Q 100s which are in reasonable agreement with those of the Commission. Any significant difference shall be reviewed with and subject to approval by the Executive Director.

(c) Methods and procedures shall be uniform, so far as practicable, within sub-basins which have a major effect on the larger basins of which they are

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a part. To assist in achieving this objective the Commission staff will periodically provide to the various interested governmental agencies and others Q 100 data as developed by the Delaware River Basin Commission Hydrology Coordinating Committee for key locations in the Delaware River Basin. These will be based on a Log Pearson Type 3 analysis of data from the U.S.G.S. gaging stations using station skew, regional skew, or weighted skew, depending on the scope of data at each station.

§ 415.43 Mapped and unmapped delineations.

(a) Whenever an official flood plain map providing the pertinent information is available with respect to a given project, the map shall be used for the delineation of the flood hazard area, floodway, flood fringe and determination of flood protection elevation.

(b) Whenever an official flood plain map providing the required information is not available with respect to a given project, the administrative agency shall require the project landowner to submit details concerning the proposed uses as needed to determine the floodway and flood fringe limits at the proposed site, including: cross-sections of the stream channel and overbanks, stream profile, and factors involved in determining obstructions to flow. From the data submitted, soil surveys, historic flood maps, high water marks and other empirical data, the applicant, subject to verification by the administrative agency, shall calculate flood hazard areas, and establish the flood protection elevation for the particular site.

(c) Pending the preparation and completion of flood plain mapping, a "general flood plain" area shall be prescribed by the administrative agency to delineate for public guidance the areal limits of site locations which are required to be submitted for review under this regulation.

ENFORCEMENT

§ 415.50 General conditions.

On and after January 1, 1978, where:

(a) The flood hazard at the site is clear, present and significant, or the

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local government having jurisdiction has special flood hazard areas identified pursuant to the National Flood Insurance Act; and

(b) The site is not subject to an approved state or municipal regulatory system having the same or similar effect on the flood hazard as this regulation, the Commission may condition its approval on any local governmental project under section 3.8 of the Compact upon the adoption and enforcement of flood plain regulations, approved hereunder, by the state or local government having jurisdiction.

§ 415.51 Prior non-conforming structures.

A structure which was lawful before the adoption of this regulation but which is not in conformity with the provisions hereof, shall be subject to the following conditions (to be enforced by the appropriate authority as to Class I and Class II projects, respectively, under §§ 415.40 through 415.43 of this part):

(a) A non-conforming structure in the floodway may not be expanded, except that it may be modified, altered or repaired to incorporate flood proofing measures provided such measures do not raise the level of the 100-year flood.

(b) A non-conforming structure in the floodway which is destroyed or damaged by any means, including a flood, to the extent of 50 percent or more of its market value at that time may not be restored, repaired, reconstructed or improved except in conformity with the provisions of these regulations.

§ 415.52 Violations.

Any violation of this regulation shall be subject to penalties imposed by the Compact.

PART 420—BASIN REGULATIONS— WATER SUPPLY CHARGES

GENERAL

Sec.

420.1 Definitions.

WATER SUPPLY POLICY

420.21 Policy.

420.22 Prohibition; sanctions.

420.23 Exempt uses under the Compact.